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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/943,950	08/31/2001	Kerry A. Thompson	67952/01-270	2031
22206	7590	10/07/2005	EXAMINER	
FELLERS SNIDER BLANKENSHIP BAILEY & TIPPENS THE KENNEDY BUILDING 321 SOUTH BOSTON SUITE 800 TULSA, OK 74103-3318			BLENMAN, AVALON	
			ART UNIT	PAPER NUMBER
			2153	

DATE MAILED: 10/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/943,950

Applicant(s)

THOMPSON, KERRY A.

Examiner

Avalon Blenman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☒ Claim(s) 10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>09/29/2005</u> . | 6) <input type="checkbox"/> Other: _____  |

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### **DETAILED ACTION**

1. This office action is a first action on the merits of this application and is made **NON-FINAL**. Claims 1-15 are currently pending, of which 1, 10, & 13 are independent claims.

### ***Information Disclosure Statement***

2. The information disclosure statement (IDS) submitted has been entered and is being considered by the examiner.

### ***Claim Objections***

3. Claim **10** is objected to because of the following informalities: It is suggested applicant remove the duplicate phrases "randomization position" and "at" (lines 21 & 22, respectively). Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim **10** recites the limitation "said location values" (line 11). There is insufficient antecedent basis for this limitation in the claim.

6. Claim **10** is rejected under 35 U.S.C. 112, second paragraph, as being narrative and indefinite for failing to particularly point out and distinctly claim the subject matter

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which applicant regards as the invention. Step (d4) is unclear and will be treated as best understood by Examiner. Appropriate clarification is required.

7. Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear how the base work can be read "into" the computer RAM. Is the intent to read the base work *from* the computer RAM. The claim will be treated as best understood by Examiner. Appropriate clarification is required.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1-9, & 13-15 are rejected under 35 U.S.C. 102(e) as being anticipated by **Peliotis et al. (US 2002/0065678)**, hereinafter Peliotis.

10. In considering independent claim 1, Peliotis discloses a method for the presentation a work to a user, comprising the steps of:

(a) obtaining a base work (video) [fig.1. #10 arrow, ¶0020];

(b) selecting at least one randomization position ("marker") within said base work [ "--

*Marker generator 16 generates markers that mark the beginning/end of each video segment...any method can be used for generating markers--*", ¶0020, ¶0029];

(c) selecting, for at least one of said randomization positions ("excluded video segments"), a plurality of alternative content segments associated therewith [¶0008, ¶0029];

(d) for any randomization position so selected, randomly selecting one of said plurality of alternative content segments associated therewith [¶0008, ¶0029]; and,

(e) performing said base work and any alternative content segments so selected, said alternative content segments replacing at least a portion of said base work during said performance [ "--Switcher 86 can also generate an alternate video signal 114 that comprises an alternate selection of video that can be used to replace excluded video segments during a real time broadcast--", ¶0008, ¶0029].

11. In considering claim 2, Peliotis discloses:

(a) a microprocessor (inherent feature of any computer, i.e. "set-top box"), said microprocessor being in electronic communication with said computer-readable medium (fig. 3, #60, "video storage device", fig. 7, #148, "alternate video slate storage device"), said microprocessor at least for processing information read from said computer-readable medium [ "--Video segments identified in the video

*pointer table 69 as being video that is OK to view are then read from the video storage device 60--", ¶0025, "--the filter/switch can select a video slate from the alternate video slate storage device 148--", ¶0030];*

- (b) computer memory (inherent feature of any computer, i.e., "set-top box") in electrical communication with said microprocessor, said computer memory containing at least a plurality of computer instructions defining the method of claim 1, said plurality of computer instructions for execution by said microprocessor;
- (c) an output interface (fig. 7, #144, "Filter/Switch"), said output interface being in electrical communication with said microprocessor and receiving information therefrom for purposes of presenting said base work and said alternative content segments to the user according to said plurality of computer instructions executed by said microprocessor [*--The output of the filter/switch 144 is the display video 150 that is applied to the user's television 152 for display--", ¶0030];* and,
- (d) a display device (fig. 7, #152, "television") in electrical communication with said output system, said display device for presenting said base work and any selected alternative content segments to the user [¶0030].

12. In considering claim 3, Peliotis does not explicitly disclose computer memory in communication with a microprocessor; nonetheless, as disclosed above in reference to claim, 2, this is an inherent feature of any computer. Furthermore, Examiner takes

Official Notice that at the time of the invention, RAM, ROM, EPROM, PROM, and flash RAM were notoriously known as common types of memory to one of ordinary skill in the art.

13. In considering claim 4, Peliotis discloses:

- at least one of said alternative content segments is a content segment taken from said base work [¶0030].

14. In considering claim 5, Peliotis discloses:

- said base work is selected from the group consisting of a movie, a video recording, a musical work or a computer game [¶0020].

15. In considering claim 6, Peliotis discloses:

- displaying said base work and any alternative content segments so selected on a video display (television), said alternative content segments replacing at least a portion of said base work during said performance [¶008, ¶0030].

16. In considering claim 7, Peliotis discloses:

- (e1) executing an interactive computer program until one of said randomization positions is reached [fig. 8, step 160, ¶0031],

(e2) executing any computer instructions contained within said selected alternative content segment associated with said reached randomization position [fig. 8, steps 166:YES & 174, ¶0031].

17. In considering claim 8, Peliotis discloses:

- said base work is a video game [claim 13].

18. In considering claim 9, Peliotis discloses:

- defining a base work (video) [¶0020].

19. In considering claim 13, Peliotis discloses a method for the presentation of a work to a user, wherein is provided

- a base work (video) [¶0020],
- a logic tree (fig. 5, “ video pointer table”) associated with said base work, said logic tree defining at least one randomization point (“start”/“end”) within said base work [¶0027], and,
- a plurality of alternative content segments (fig. 7, #148, “alternate video slate”) for use with said base work and said logic tree, at least two of said plurality of alternative content segments being associated with said at least one randomization point [¶0030], comprising the steps of:

(a) reading at least a portion of said base work [fig. 8, step 156, ¶0031];



- (b) reading at least a portion of said logic tree [*--the video pointer table is then read sequentially from the video segment database 62--*”, ¶0026];
- (c) performing said base work for the user at least until said at least one randomization point is reached [fig. 8, step 160, ¶0032] ;
- (d) selecting randomly among said at least two alternative content segments associated with said randomization point [fig. 8, step 168, ¶0032];
- (e) reading said selected alternative content segment [fig. 8, step 168, ¶0032]; and,
- (f) performing said selected alternative content segment for the user [fig. 8, step 174, ¶0032].

20. In considering claim **14**, Peliotis discloses:

- said base work is selected from the group consisting of a movie, a video recording, a musical work or a computer game [¶0020].

21. In considering claim **15**, Peliotis discloses:

- reading said base work into computer RAM (“storage device”) [*--Video segments identified in the video pointer table 69 as being video that is OK to view are then read from the video storage device 60--*”, ¶0025].

### ***Claim Rejections - 35 USC § 103***

22. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

23. Claims **10-12** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Peliotis**.

24. In considering interdependent claim **10**, Peliotis discloses a method of preparing a work for presentation to a user, comprising the steps of:

- (a) selecting a base work (video) [¶0020];
- (b) selecting at least one randomization position within said base work, each of said at least one selected randomization positions having a marker position within said base work associated therewith [*--Marker generator 16 generates markers that mark the beginning/end of each video segment...any method can be used for generating markers--*], ¶0020, ¶0029];
- (c) for at least one of said selected randomization positions, selecting a plurality of alternative content segments associated therewith, each of said selected alternative content segments having a pointer associated therewith [¶0027, ¶0029];
- (d) preparing a logic tree ("video pointer table") [fig. 5, ¶0027]
- (d1) said logic tree containing at least one of said location values [fig. 5, "Address #n", ¶0027]

- (d2) for any location value contained within said logic tree, said logic tree containing pointers representative of at least two of said alternative content segments [fig. 5, "Pointers #n", ¶0027],
- (d3) said logic tree associating alternative content segments with each of said at least one location values [fig. 5, "Video Pointers", ¶0027, and,
- (d4) said logic tree defining at least a portion of a playback algorithm wherein said associated alternative content segments are randomly selected at wherein at said at least two alternative content segments are associated with at least one randomization position randomization position associated alternative content segments are randomly selected during playback at least one randomization location [¶0008, ¶0029];
- (e) storing said base work in a first computer-readable media (fig. 3, #60, "video storage") [*--the unencoded video stream 58 is stored in a video storage device 60--*, ¶0025); and,
- (f) storing said logic tree in a second computer-readable media (fig. 3, #62, "video segment database") [*--the video pointer table 69 that is stored in the video segment database--*, ¶0027].

Peliotis discloses a logic tree and pointers associated with the selected randomization positions, but does not explicitly disclose a logic tree and pointers associated with the alternative content segments. Nonetheless, at the time of the invention it would have been an obvious modification to associate a similar logic tree

and pointers to the alternate content segments (alternate video) in order to also categorize the alternative content segments and determine if such segments are of appropriate content to substitute in the selected randomization positions.

25. In considering claim **11**, while Peliotis does not explicitly disclose the first and second computer media are one of the same. Nonetheless, at the time of the invention, this would have been matter of obvious engineering choice make the second computer-readable media an integral part of the first computer-readable media because the designs would be functionally equivalent as storage components for the base work and the logic tree regardless of if they are separate or integral. See *In re Larson*, 340 F.2d 965, 968, 144 USPQ 347, 349 (CCPA 1965).

26. In considering claim **12**, Peliotis discloses:

- said base work is selected from the group consisting of a movie, a video recording, a musical work or a computer game [¶0020].

### ***Conclusion***

27. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

28. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Avalon Blenman whose telephone number is (571) 272-

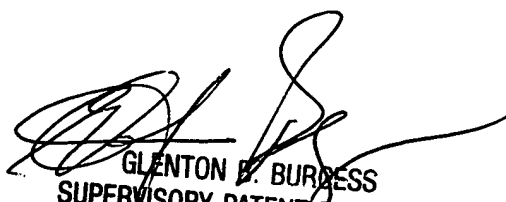
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5864. The examiner can normally be reached on Mon-Fri, 7:00 AM - 4:30 PM (even date Mons. off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton Burgess can be reached on (571) 272-3949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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